IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5598 of 2006 (O&M)
Date of Decision: 26.10.2006

Avtar Singh & Anr. ...Petitioners

Vs.

Charanjit Kaur & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.RPS Ahluwalia, Advocate,
for the petitioners.
Mr.J.S.Cooner, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Notice of motion.

Mr. J.S.Cooner, Advocate, accepts notice on behalf of respondent No.1.

Present revision petition has been filed against the orders passed by the courts below rejecting the application moved by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code).

The petitioners herein had filed a suit for declaration to the effect that the plaintiffs are owners in possession of the land bearing khewat/khatauni No.310/360 khasra No.2//25, 3//20, 21, 19//7, 8, 9, 13, 14, 70//22/2/1, 23/1, 83//2/2, 3/1/2, 545, 815/1, situated in village Panjokhra

Hadbast No.29 Tehsil ad District Ambala as per jamabandi for the year 1998-99.

The defendant No.1 is the widow of Amarjit Singh deceased son of petitioner No.2. In the suit it was claimed that petitioner No.2 has become owner of the property in dispute in pursuance to a Will executed in his favour by his deceased son Amarjit Singh on account of the fact that the relations between Amarjit Singh and his wife Charanjit Kaur were strained.

Learned courts below have rejected the injunction application only in view of the fact that the mutation of inheritance of Amarjit Singh was sanctioned in favour of Charanjit Kaur and in pursuance thereto she had become co-owner with the petitioners herein and therefore, no injunction could be passed against a co-owner.

Learned courts below failed to notice the order of mutation in favour of Smt. Charanjit Kaur which was set aside by the Appellate Court. It is also not in dispute that the mutation is disputed and it is still to be decided whether the Will is genuine or not. The petitioner has placed on record copy of the Will and this was a prima facie document showing the petitioner No.2 to be owner and entitle to the property.

In view of this, the impugned orders cannot be sustained and accordingly, are set aside. The application moved under Order 39 Rules 1 and 2 of the Code is allowed. The respondents are restrained from alienating he property in dispute. However, the parties are directed to maintain status quo qua possession.

(Vinod K.Sharma)
Judge

26.10.2006
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